

REMARKS

These remarks are in response to the Office Action mailed May 12, 2011. No claims have been amended.

I. REJECTION UNDER 35 U.S.C. §103

Claims 1, 2, 4-6, 8-14 and 26-31 stand rejected under 35 U.S.C. §103 as allegedly being unpatentable over WO 92/10203 in view of U.S. Patent No. 5,455,032 and Shaw et al. Applicants respectfully traverse this rejection.

Applicants respectfully submit that the Office is equating a cholesterol containing composition as disclosed in the '203 application to phosphorylcholine choline (PC)-enriched preparation from a component of a cell wall polysaccharide. As the Examiner will recognize cell walls are polysaccharide/protein compositions lacking cholesterol. Thus, the '203 compositions and teachings of the present invention are different. Further, the teachings of the '032 patent to immunize with a phosphocholine preparation to immunize against pathogenic organisms would not lead one of skill in the art to treat atherogenesis phosphorylcholine choline preparations from pneumococci. The '032 patent and '203 application are directed against totally different antigens and treatments and thus are non-analogous art.

Simply, the '203 application uses a cholesterol preparation to treat cholesterol disorders, the '032 patent uses a phosphocholine preparation to vaccinate against a bacterial pathogen and Shaw et al. teach that phosphorylcholine choline has a head group and fatty acid tails. Even if one of skill in the art would combine such references from non-analogous art, which is unlikely, the combination fails to even come close to suggesting an enriched phosphorylcholine choline preparation from pneumococcal organisms would be useful to treat atherogenesis.

Applicants respectfully submit that the '203 application does not teach or suggest immunizing with a preparation from Streptococcus to prevent atherogenesis wherein an IgM response is produced. In fact the '203 application teaches that an IgG response is produced. This is in contrast with the present invention which demonstrates that there was no correlation with the IgG response (see paragraph [0082]). Furthermore, the Examiner is directed to Figure 6, which demonstrates that corresponding responses from IgG and IgM.

When the '203 is combined with the '032 patent the combination still fails to teach or suggest immunizing a subject with a Streptococcus preparation for preventing or treating atherogenesis wherein an IgM response is elicited.

The addition of Shaw et al. to the '203 application also do not teach or suggest using a Streptococcus preparation to treat or prevent atherogenesis or an IgM response. The reference appears to be combined for the alleged teaching that phosphatidylcholine comprises two fatty acid chains. However, this teaching in combination of the '203 application does not render the invention obvious. The Examiner is reminded that for a *prima facie* case of obviousness (even under the lower standards of KSR), the references when combined must teach all the elements of Applicants' claimed invention and must provide some expectation of success. Applicants submit that because of the complexity of biological systems there is no expectation that because natural antibodies are present that react with PC and pneumococcal infections that a Streptococcal preparation would provide a method of treating or preventing atherogenesis. Applicants submit that only in hindsight (upon showing the effectiveness of the present claimed invention) could one of skill in the art have arrived at the reasoning for the present obviousness rejection.

Simply, the compositions of the present invention and the composition disclosed in the '203 application are different. Cell walls lack cholesterol and the preparation of the present invention is derived from a phosphorylcholine (PC)-enriched preparation from a component of a cell wall polysaccharide. In contrast, the composition of the '203 application includes "cholesterol" (see, e.g., claim 1).

For at least the foregoing reasons, Applicants respectfully submit that the claimed invention is non-obvious.

The Director is authorized to charge any required fee or credit any overpayment to Deposit Account Number 50-4586, please reference the attorney docket number above.

The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

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